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United States Department of State

Washington, D.C. 20520

Case No.: 200805524

IPS Segment

In response to your request dated August 31, 2008, under the Freedom of Information Act (Title 5 USC Section 552), we initiated a search of the record system of the Office of Information Programs and Services. That search has been completed and has resulted in the retrieval of five documents responsive to your request. After reviewing these documents, we have determined that they may be released in full. All released material is enclosed.

The Freedom of Information Act provides for the recovery of the direct costs of searching for and duplicating records requested for non-commercial use. However, no fee is charged for the first two hours of search time or for the first one hundred pages of duplication. Since less than two hours of search time have been expended and fewer than one hundred pages have been duplicated in this case, your request has been processed without charge to you.

We have now completed the processing of your case. If you have any questions, you may write to the Office of Information Programs and Services, SA-2, Department of State, Washington, DC 20522-8100, or telephone us at (202) 261-8484. Please be sure to refer to the case number shown above in all correspondence about this case.

We hope that the Department has been of service to you in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Frank Tumminio" with a stylized flourish at the end.

Sheryl L. Walter, Director
Office of Information Programs and Services

Enclosures:
As stated.

I

U.S. DEPARTMENT OF JUSTICE
OFFICE OF INFORMATION AND PRIVACY

OUTLINE: OVERVIEW OF THE FREEDOM OF INFORMATION ACT (FOIA)

PART ONE: PROCEDURES

I. BACKGROUND

- A. FOIA enacted in 1966--5 U.S.C. § 552
- B. Statutory right of access to information in federal agencies
- C. To ensure informed citizenry/prevent secret law
- D. Records must be disclosed unless exempt, excluded
- E. Amended several times--latest 2002

II. THREE FORMS OF ACCESS

- A. (a)(1): information that must be published in Federal Register: agency organization, functions, procedures, substantive rules, general policy statements
- B. (a)(2): information that must be available for public inspection and copying:
 - 1) final opinions, administrative staff manuals, specific policy statements;
 - 2) records released under FOIA which are likely to become the subject of subsequent requests; electronic availability for such records created by agency after 11/1/96

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- 2 -

- C. (a)(3): agency, upon request, which reasonably describes the records sought and is made in accordance with published rules, shall make its records promptly available, unless information is exempt/excluded
1. Agency
 - a) agency--nearly all executive branch entities
 - 1) not personal staff of President
 - 2) not units within the Executive Office of the President whose sole function is to advise/assist the President
 - 3) not courts or Congress, state gov'ts
 2. Request--reasonable description (H.R. Rep. No. 876 (1974))
 3. "Published rules"--conform with agency regulations
 4. Make records "promptly available"
 5. Any person: individuals (U.S./foreign), partnerships, corporations, associations, foreign/state/local governments (except foreign government seeking intelligence agency information)
 - a) no federal agencies or fugitives
 - b) purpose irrelevant (cf. expedited treatment)
 6. Records
 - a) disclosure/nondisclosure (not viewing)
 - b) no need to create records
 - c) format choice--must provide record in any form requested, if record is "readily reproducible" in that form

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- d) "agency record" tests:
 - 1) created or obtained by agency and under agency control at time of request (DOJ v. Tax Analysts, 492 U.S. 136 (1989))
 - 2) personal records--control/possession, function/use, circumstances/conditions of creation/transfer (Bureau of National Affairs, Inc. v. DOJ, 742 F.2d 1484 (D.C. Cir. 1984))

III. ADMINISTRATIVE PROCESS

A. Initial request

- 1. Duty to search. Must make reasonable efforts to search for records in electronic form (unless significant interference with operation of the agency's automated information system)
- 2. Referral/consultation
- 3. Time limit--20 working days:
 - a) one-time extension of ten working days
 - b) if more time needed, agency must allow requester opportunity to narrow request or arrange for alternative time for processing
 - c) multi-track processing
 - d) acknowledging request
 - e) stay of proceedings (Open America v. Watergate Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976))

- 1) standard: exceptional circumstances exist and agency exercising due diligence
- 2) no stay for backlog resulting "from a predictable workload of requests" unless "agency demonstrates reasonable progress in reducing backlog" BUT requester's refusal to reasonably modify the scope of request or arrange an alternative time frame for processing after being given an opportunity to do so considered a factor in determining whether exceptional circumstances exist.

f) Expedited treatment--compelling need

- 1) Imminent threat to the life or physical safety of an individual

OR

- 2) "With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity."

B. Administrative appeal

1. Time limit--20 working days
2. Exhaustion of administrative remedies
3. Right to judicial review

RESOURCES:

Freedom of Information Act Guide

FOIA Post (electronic); FOIA Update (paper but converted to electronic)

Department of Justice FOIA Web Site (www.usdoj.gov/04foia/index.html)

OMB Fee Guidelines, 52 Fed. Reg. 10012 (Mar. 27, 1987)

FOIA Counselor Number -- (202) 514-3642 (FOIA)

Privacy Act Questions -- OMB (202) 395-0348

Fee Questions -- OMB (202) 395-7857

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Fees and Fee Waivers under the Freedom of Information Act
September 11, 2007 - Department of State
Washington, D.C.

I. FEES under the FOIA

Each agency shall promulgate regulations "specifying the schedule of fees applicable to the processing" of FOIA requests. The schedule "shall conform to" OMB's Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10012 (Mar. 27, 1987). An agency's fee schedule may recovery only the direct costs of search, review and duplication.¹ See 5 U.S.C. § 552(a)(4)(A)(i), (iv).

A. TYPES OF FEES²

1. Search - all time spent looking for material that is responsive to a request; searches may be done manually or by computer
2. Review - determining whether the material is exempt from disclosure. ("It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release."³)
3. Duplication - the process of making a copy of the document. For other methods of duplication, "agencies should charge the actual direct costs of producing the documents."

¹ 1. Direct costs are those expenditures which an agency incurs in searching for, reviewing, and duplicating records. OMB Guidelines, Section 6c.

2. OMB Guidelines Section - *Definitions*.

3. Id.

B. CATEGORIES OF REQUESTERS⁴

1. Commercial use requester – a request from one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester.
2. "Favored" requesters –
 - a. Educational Institutions – schools which operate a program of scholarly research)
 - b. Non-commercial scientific institutions – Institutions not operated on a commercial bases, operated for the purpose of conducting scientific research that does not promote a particular product; "hard" or "soft" sciences; e.g., Brookings Institute.
 - c. Representatives of the new media – persons actively gathering news for entities that are organized and operated to publish or broadcast news; freelancers.
3. All other requesters.

C. ASSESSING FEES⁵

1. Submitting a request
2. Statutory restrictions.
3. Notification.
4. Agency threshold.
5. Prepayment.
6. Advance payments.

NB: In accordance with the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(i), the Office of Management and Budget was directed to promulgate fee guidelines. See OMB's "Uniform Freedom of Information Act Fee Schedule and Guidelines" found at 52 Fed. Reg. 10,012 (Mar. 27, 1987). Fee questions should be directed to the Information Policy, and Technology

4. OMB Guidelines Section 6 - *Definitions.*

5. OMB Guidelines Sections 7 & 8 - *Fees to be Charged (General and by category); Section 9 - Administrative Actions.*

II. FEE WAIVERS under the FOIA.

A. GENERAL and PROCEDURAL CONSIDERATIONS

1. Preliminary questions:

Are there responsive records?

Are there assessable fees?

Has a fee waiver been asked for?

Are there instances when a requested fee waiver does not need to be adjudicated?

2. What if the requester has not provided sufficient information for the agency to make its fee waiver determination?⁶

3. The focus for fee waiver purposes is on the releasable information.⁷

4. Is indigence a sufficient basis for a fee waiver?⁸

5. Why is the administrative record so important?⁹

6. Should appeal rights be given for fee waiver determinations?¹⁰

⁶ See DOJ Guide at 166 & n. 143; 178 & n. 167; see also 146 & n. 84; OMB Fee Guidelines, 52 Fed. Reg. at 10,017-18, ¶ 6(g).

⁷ See DOJ Guide at 186 & nn. 194, 195; see also, e.g., 28 C.F.R. § 16.11(k)(4).

⁸ See DOJ Guide at 174-75 & n. 162.

⁹ See DOJ Guide at 192 & nn. 216, 217.

¹⁰ See DOJ Guide at 190; see also, e.g., 28 C.F.R. § 16.6(c) & 16.9.

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B. THE STATUTORY STANDARD--Documents shall be furnished without any charge [or at a reduced rate] . . . if disclosure of the information is in the public interest because it is [2] likely to contribute [4] significantly to public understanding of the [1] operations or activities of the government and is [5-6] not primarily in the commercial interest of the requester.

C. APPLYING THE STANDARD¹¹

1. The "public interest" requirement.

a. Does the subject of the request concern the operations or activities of the federal government?

b. Are the records to be disclosed meaningfully informative of the subject matter of the request?

c. Will disclosure contribute to public understanding?

d. Will disclosure contribute significantly to public understanding?

2. Measurement of the requester's commercial interest, if any.

a. Does the requester have a commercial interest, i.e., one that furthers the commercial, trade, or profit motive of the requester?

b. If yes, which is greater, the identified public interest or the identified commercial interest?

¹¹ 11. See FOIA Update, Vol VIII, No. 1 at 3-10, also available at http://www.usdoj.gov/oip/foia_updates/Vol_VIII_1/viii1page2; see also, e.g., 28 C.F.R. § 16.11.

D. SOURCES OF AUTHORITY/GUIDANCE

1. 5 U.S.C. § 552(a)(4)(A).
2. Agency regulations.
3. Case law.
4. 1987 DOJ Fee Waiver Policy Guidance
www.usdoj.gov/oip/foia_updates/Vol_VIII_1/viii1page2
5. 1987 OMB Fee Schedule and Guidelines (available on OMB's Web site).
6. 1983 Fee Waiver Procedural Considerations [Note changes since 1986 amendments, esp. in areas of exhaustion, de novo review standard and appeal rights]. See FOIA Update, Vol. IV, No. 1 (1983).
7. DOJ Guide to the FOIA.
8. Other [e.g. O'Reilly in 2 vols. and the ACLU Guide].
9. HOTLINE 202-514-FOIA (3642).

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Freedom of Information Act Exemption Overview

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August 12, 2004
Brent Evitt

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Exemption 1 - National Security

Exemption 1 protects national security information concerning the national defense or foreign policy, provided that it has been properly classified under Executive Order 12,958, as amended (signed by the President on March 25, 2003).

General Classification Principle - Agency may not classify information unless "its disclosure reasonably could be expected to cause damage to the national security." **Sec. 1.2(a)(4)**.

Sec. 1.1 - Classification Standards

- (a) Information may only be classified if the following conditions are met:
 - (1) Decision made by original classification authority.
 - (2) U.S. Government controls the information.
 - (3) Information falls within the Sec. 1.4 categories and
 - (4) Original classification authority determines that release reasonably could be expected to damage national security, which includes defense against transnational terrorism. **See Sec. 1.2 (below)**.
- (b) An unauthorized disclosure does not lead to automatic declassification.
- (c) The unauthorized disclosure of foreign government information is presumed to cause damage to the national security. (Note that this is a recent change).

Sec. 1.2 - Classification Levels

- (1) **Top Secret** - Unauthorized release reasonably could be expected to cause **exceptionally grave damage** to the national security.
- (2) **Secret** - Unauthorized release reasonably could be expected to cause **serious damage** to the national security.
- (3) **Confidential** - Unauthorized release reasonably could be expected to cause **damage** to the national security.

Exemption 1 Does NOT Protect

1. Information we *intended* to classify.
2. Information that *used to be* classified, except as provided in Sec. 1.7(c), or
3. Information that *should have been* classified.

Sec. 1.4 - Classification Categories - What types of information are we allowed to protect? (*Significant 2003 changes underlined*)

- A. Military Plans, Weapons Systems, or Operations.
- B. Foreign Government Information.
- C. Intelligence Activities, Sources, or Methods.
- D. Foreign Relations or Foreign Activities, Including Confidential Sources.
- E. Scientific, Technological, or Economic Matters Relating to National Security, Which Includes Defense Against Transnational Terrorism.
- F. Government Programs for Safeguarding Nuclear Materials and

- G. Facilities, Vulnerabilities, or Capabilities of Systems, Installations, Infrastructures, Projects, Plans or Protective Services Relating to National Security, Which Includes Defense Against Transnational Terrorism.
- H. Weapons of Mass Destruction.

Sec. 1.7(d) - Post-Request Agency Classification - Authorizes the classification of a record after an agency has received a FOIA request for it, but only with the "personal participation" of designated high-level officials and only on a "document-by-document basis."

Sec. 1.7(e) - "Mosaic" or "Compilation" Theory - Compilations of otherwise unclassified information may be classified if the compiled information reveals an additional association or relationship that: (1) meets the [order's classification] standards, and (2) is not otherwise revealed in the individual items of information.

Sec. 1.8 - Classification Challenges - Establishes a mechanism through which classification determinations can be challenged within the federal government. "Authorized holders of information" who, in good faith, believe that the classification is improper are "encouraged and expected" to challenge that classification. **See Sec. 1.8(a)**.

Sec. 3.3 - Automatic Declassification - Requires the automatic declassification of all information that is more than twenty-five years old, with exceptions limited to especially sensitive information designated as such by the heads of agencies, by December 31, 2006. **See Sec. 3.3(a)**.

Sec. 3.5 - Mandatory Declassification Review - Provides for a "mandatory declassification review program that allows any person entirely apart from the FOIA context -- to request that an agency review its national security records for declassification.

Sec. 3.5 - "Glomar" Incorporation - "An agency may refuse to confirm or deny the existence or nonexistence of requested information whenever its existence or nonexistence is itself classified under this order."

FOIA's (c)(3) Exclusion - This special records exclusion applies to certain especially sensitive records maintained by the Federal Bureau of Investigation, which concern foreign intelligence, counterintelligence or international terrorism matters. Where the existence of such records is itself a classified fact, the FBI may, so long as the existence of the records remains classified, treat the records as not subject to the requirements of the FOIA.

Agency Deference - Courts are strongly inclined to accept the agency's position that disclosure of this type of information will cause damage to national security interests because this is "necessarily a region for forecasts in which [the agency's] informed judgment as to potential future harm should be respected." *Gardels v. CIA*, 689 F.2d 1100, 1106 (D.C. Cir. 1982).

Segregation - General requirement that agencies segregate and release nonexempt information, unless the segregated information would have no meaning.

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Special Knowledge? - Courts accord little or no weight to opinions of persons other than the agency classification authority.

Courts Have Rejected Opinions of

1. A former ambassador who had personally prepared some of the records at issue; *Rush v. Dep't of State*, No. 88-8245, slip op. at 17-18 (S.D. Fla. Sept. 12, 1990).
2. A retired admiral with knowledge of the subject; *Hudson River Sloop Clearwater, Inc. v. Navy*, 891 F.2d 414, 421-22 (2d Cir. 1989).
3. A former CIA agent with knowledge of the subject; *Gardels v. CIA*, 689 F.2d 1100, 1106 n.5 (D.C. Cir. 1982); and
4. A retired CIA staff historian with knowledge of the subject; *Pfeiffer v. CIA*, 721 F. Supp. 337, 340-41 (D.D.C. 1989).

"Public Domain" - Courts have held that, in asserting a claim of prior public disclosure, a FOIA plaintiff bears the initial burden of pointing to specific information in the public domain that appears to duplicate that being withheld.

Exemption 2 - Internal Matters

Exemption 2 protects records that are "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2).

Legislative History of Exemption 2 - Indicates that Congress was not entirely in agreement on the boundaries.

Exemption 2 Threshold Test - Does this material reflect a personnel rule or internal practice of the agency, or is it substantially related to a personnel rule or internal practice?

Dep't of the Air Force v. Rose (Sup. Ct. 1976) - This case was the first real test for Exemption 2. The Court held that Exemption 2 protected routine or trivial matters, but left the door open for Exemption 2 to protect more substantial matters.

Founding Church of Scientology v. Smith (D.C. Cir. 1983) - The D.C. Court of Appeals set out three specific steps for determining the applicability of Exemption 2:

1. The material withheld should satisfy the threshold test as a **personnel rule or internal practice of the agency**.
2. If material relates to **trivial administrative matters** of no public interest, it may be withheld under Low 2.
3. If there exists a legitimate public interest, the material should be released unless the government can show that disclosure would **risk circumvention of law or regulations**.

EXEMPTION 2 - LOW

No Relation to Harm - Congress intended for LOW 2 information to be exempt to save agencies the administrative burden of processing this information, thereby saving taxpayer dollars.

Examples of LOW 2 material from court decisions - Informant symbol numbers, file numbers, internal office rules and other trivial

matters.

Examples of material NOT to be protected by LOW 2 - Policy evaluations, disciplinary actions against employees, standards of employee conduct, grievance procedures.

Public Interest? Don't forget that if there is a public interest in the information, then LOW 2 is inappropriate.

Less Burdensome to Process? - The core purpose of Exemption 2 is to save taxpayer dollars. Agencies should always examine whether it is less burdensome to process the information.

EXEMPTION 2 - HIGH

Two Part Test (*Crooker v. ATF*, 670 F.2d 1051 (D.C. Cir. 1981) -

1. Document must be "**predominately internal**," and
2. Disclosure must "**significantly risk circumvention**" of a legal requirement.

Public Interest? Public interest is irrelevant in HIGH 2 matters. The concern is that disclosure should not benefit those attempting to violate the law and avoid detection.

NO SECRET LAW - Records must not regulate activities among members of the public. Exemption 2 should never be used to create secret laws.

Exemption 3 - Other Statutes

Exemption 3 of the FOIA incorporates the various nondisclosure provisions that are contained in other federal statutes. See 5 U.S.C. § 552(b)(3).

Two Subparts of Exemption 3:

- A. Statute must **require** that the matters be withheld from the public in such a manner as to **leave no discretion** on the issue, or
- B. Statute must establish **particular criteria for withholding** or refers to particular types of matters to be withheld.

Examples of Subpart A Statutes:

Census Act - Prohibits release of any identifying information collected during the Census. No discretion granted to the agency.

Civil Rights Act of 1964 - Prohibits release of information concerning matters presently before the EEOC. No discretion to agency.

Examples of Subpart B Statutes:

Patent Statute - prohibits disclosure of pending patent applications. Some discretion to agency.

National Security Act - prohibits disclosure of intelligence sources and methods. Some discretion to agency.

Exemption 4 - Commercial Information

Ex. 4 protects trade secrets and commercial or financial information obtained from a person which is privileged or confidential. See 5 U.S.C. § 552(b)(4).

A. Trade Secret Information -

"Trade Secret" is defined broadly to encompass any process or device for continuous use in the operation of a business.

Trade secret protection, however, is rarely invoked.

B. Commercial or Financial Information -

This category has the ordinary meanings: related to or dealing with business or commerce.

1. Obtained from a Person:

This includes most entities (corporations, state governments, agencies of foreign governments), **BUT NOT** the U.S. government. This also includes information obtained from a nonprofit organization.

2. Privileged or Confidential

"Privileged" refers to the general civil discovery privileges.

"Confidential" - What is confidential?

- If the submission was VOLUNTARY, then....

Agency should apply the "customary treatment" test. *Would the submitter routinely release this information to the public?*

- If the submission was REQUIRED, then....

If the submission was required, then the information may be withheld if disclosure could reasonably be expected to cause one of the following harms:

A.) Harm to the Government (the Impairment Prong) -

Under this prong, the impairment must be significant.

B.) Harm to the Submitter (the Competitive Harm Prong)

The courts approach this prong on a case-by-case basis. Actual harm not needed; but must show "actual competition and a likelihood of substantial competitive injury."

If the information is publicly available elsewhere, then there can be no harm. You cannot protect "embarrassing" disclosure that might cause consumers' wrath.

C.) Harm To Other Governmental/Private Interest

A required submission means that the submitter must submit the information to enjoy the benefits of participation in the government contract or program. See test that follows.

Submitter Notice - Executive Order 12,600

Agency must notify the submitter of the request and allow it to file objections to release of the information. If the submitter wants the information to be protected it must submit detailed reasons why disclosure would be harmful. The agency will then determine whether the harm shown is sufficient to support withholding the information pursuant to Exemption 4.

"Reverse" FOIA Lawsuit -

A reverse FOIA lawsuit is when you are sued by the provider of the information in order to stop a release of information. This type of lawsuit would most likely come after an agency has given submitter notice, received objections to release, and made the determination that it will make the release anyway because the submitter's objections are insufficient.

Exemption 5 - Civil Discovery Privileges

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5).

Scope of the Exemption - Exemption 5 "unequivocally" incorporates "all civil discovery rules into [the] FOIA." *Martin v. Office of Special Counsel*, 819 F.2d 1181, 1185 (D.C. Cir. 1987).

Three Most Frequently Invoked Privileges -

1. Deliberative Process Privilege;
2. Attorney Work-Product Privilege; and
3. Attorney-Client Privilege.

Broad Threshold Test - Not limited strictly to inter-agency or intra-agency records. The threshold test simply was not intended to be overly technical. See *Hooper v. Bowen*, No. 88-1030, slip op. at 18 (C.D. Cal. May 24, 1989).

The Problem of Outside Consultants - Documents are often generated by or shared with paid and unpaid consultants. Such advice can "play an integral function in the government's decision[making]." *Hoover v. United States Dept of the Interior*, 611 F.2d 1132, 1138 (5th Cir. 1980).

Dep't of the Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 12 (2001) - The Supreme Court ruled that the threshold of Exemption 5 did not encompass communications between the Dep't of the Interior and several Indian Tribes which, in making their views known to the Department on certain matters of administrative decisionmaking, not only had "their own, albeit entirely legitimate, interests in mind," but also were "seeking a Government benefit at the expense of other applicants."

Informal Consultative Relationship - Threshold requirement may even be satisfied even where no "formal relationship" existed between

agency and consultant, if the consultant played a role in the agency deliberations. See *Formaldehyde Institute v. HHS*, 889 F.2d 1118, 1123-24 (D.C. Cir. 1989).

1. The Deliberative Process Privilege

To apply the deliberative process privilege, agencies must show that the communication was predecisional and deliberative

Why Do We Have the Deliberative Process Privilege? The privilege exists to "prevent injury to the quality of agency decisions." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975).

Three Policy Purposes for the Privilege -

1. To encourage open, frank discussions on matters of policy between subordinates and superiors;
2. To protect against premature disclosure of proposed policies before they are finally adopted; and
3. To protect against public confusion that might result from premature disclosure.

What Does "Predecisional" Mean? --The information must have been created before the adoption of an agency policy.

Postdecisional Documents - Generally embody statements of policy and final opinions that have the force of law, that implement an established policy of an agency, or that explain actions that an agency has already taken.

Restriction Intended to Prevent Secret Law - Courts have questioned documents that were tantamount to agency "secret law," and which affected the public.

The "No Decision" Scenario - Agency does not necessarily have to point specifically to an agency final decision, but must establish "what deliberative process is involved, and the role played by the documents in issue."

Passage of Time - The predecisional character of a document is not altered by the general passage of time or the fact that an agency has subsequently made a final decision, or even has decided to not make a final decision.

Judicial Reality Check - Courts often look "beneath formal lines of authority to the reality of the decisionmaking process." *Schlefer v. United States*, 702 F.2d 233, 238 (D.C. Cir. 1983).

Predecisional or Postdecisional? -

1. Is the document is a "final opinion" intended to establish a rule or policy that will affect members of the public?
2. Did the agency or official have the legal authority to make such a decision?
3. Did the deliberation flow from a subordinate to a superior official?

Adoption by Reference - Even if a document is clearly protected from disclosure by the deliberative process privilege, it may lose this protection if a final decision maker "chooses expressly to adopt or incorporate [it] by reference."

Deliberative v. Factual Materials - Agency must release factual materials, because it is "generally available for discovery" and does not threaten the deliberative process.

Agencies May Withhold Factual Material under Two General Types of Circumstances:

1. **Distilled Facts** - When the author of a document selects specific facts out of a larger group of facts and this very act is deliberative in nature. The act of distilling the testimony, of separating the significant facts from the insignificant facts, may constitute an exercise of judgment by agency personnel.
2. **Inextricably Intertwined Facts** - When factual information is so inextricably connected to the deliberative material that its disclosure would expose or cause harm to the agency's deliberations. If revealing factual information is tantamount to revealing the agency's deliberations, then the facts may be withheld.

D.C. Circuit Rule on Factual Material - Agencies are required to show that the factual data played a relevant role in the decision making process. See *Petroleum Info. Corp. v. United States Dep't of the Interior*, 976 F.2d at 1435, 1436 (D.C. Cir. 1992).

Duty to Segregate - Agencies always have the duty to segregate nonexempt factual material within a deliberative document unless it is impossible to reasonably segregate meaningful portions.

Draft Documents - They are protected because the very process by which a "draft" evolves into a "final" document can itself constitute a deliberative process warranting protection. See *Nat'l Wildlife*, 861 F.2d at 1122.

2. Attorney Work-Product Privilege

The work-product privilege protects material prepared by, or at the direction of, an attorney in reasonable anticipation of litigation.

Why Do We Have the Attorney Work-Product Privilege? - Its purpose is to protect the adversarial trial process.

Scope of the Privilege - The privilege sweeps broadly in several respects. The privilege is not limited to civil proceedings, but rather extends to administrative proceedings and to criminal matters.

In Anticipation of Litigation? - Litigation need never have actually commenced, so long as specific claims have been identified which make litigation probable.

Limits to the "In Anticipation" Standard - "The policies of the FOIA would be largely defeated" if agencies were to withhold any documents created by attorneys "simply because litigation might someday occur."

Recompilation of Records - Document that was prepared for two disparate purposes was compiled in anticipation of litigation if "litigation was a major factor" in the decision to create it. *Wilson v.*

Dept of Energy, No. 84-3163, slip op. at 7 n 1 (D.D.C. Jan. 28, 1985). However, documents prepared in an agency's ordinary course of business, not under circumstances sufficiently related to litigation, may not be accorded protection. See Hennessey v. United States Agency for Int'l Dev., No. 97-1113, 1997 WL 537998, at *6 (4th Cir. Sept. 2, 1997).

Documents Not Prepared By Attorney - Rule 26(b)(3) of the Federal Rules of Civil Procedure allows the privilege to be used to protect documents prepared "by or for another party or by or for that other party's representative." Courts have extended work-product protection to materials prepared by nonattorneys who are supervised by attorneys. Durham v. United States Dept of Justice, 829 F. Supp. 428, 432-33 (D.D.C. 1993).

Agency Attorney Issue - Not only do documents prepared by agency attorneys who are responsible for the litigation of a case which is being defended or prosecuted by the Dept of Justice qualify for the privilege, but also documents prepared by an attorney, not employed as a litigator. Illinois State Bd. of Educ. v. Bell, No. 84-337, slip op. at 9-10 (D.D.C. May 31, 1985).

Common Interests - The work-product privilege has been held to remain applicable when the information has been shared with a party holding a common interest with the agency. Nishnic v. United States Dept of Justice, 671 F. Supp. 771, 775 (D.D.C. 1987).

Attorney Work-Product and Factual Material - No distinction between factual and deliberative work-product should be applied. This broad view of the privilege has been expressed by several courts including the D.C. Circuit, to clarify once and for all that factual information is fully entitled to work-product protection. See Martin v. Office of Special Counsel, 819 F.2d 1181, 1187 (D.C. Cir. 1987).

Witness Statements - The Supreme Court has recognized at least a qualified privilege from civil discovery for witness statements - such material was held discoverable only upon a showing of necessity and justification. See Hickman v. Taylor, 329 U.S. 495, 511 (1947). Applying the "routinely and normally discoverable" test of Grolier and Weber Aircraft, the D.C. Circuit has firmly held that witness statements are protectible under Exemption 5. See Martin, 819 F.2d at 1187.

Termination of Litigation - The Sup. Ct.'s decision in Grolier also resolved a split in the circuits by ruling that the termination of litigation does not vitiate the protection for material otherwise properly categorized as attorney work-product. 462 U.S. at 28. Thus, as a matter of law, there is no temporal limitation on work-product protection under the FOIA.

3. Attorney-Client Privilege

Why Do We Have The Attorney-Client Privilege? - The privilege exists to protect "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." Mead Data Cent., Inc. v. United States Dept of the Air Force, 566 F.2d 242, 252 (D.C. Cir. 1977). Unlike the attorney work-product privilege, the attorney-client privilege is not limited to the context of litigation. Moreover, although it fundamentally applies to facts divulged by a client to his attorney, this privilege also encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information.

The Supreme Court has held that "sound legal advice or advocacy serves public ends and that such advice or advocacy depend upon the lawyer's being fully informed by the client." Upjohn Co. v. United States, 449 U.S. 383, 389 (1981).

The Agency Attorney Issue - Again - Confidentiality may be inferred when the communications suggest that "the government is dealing with its attorneys as would any private party seeking advice to protect personal interests." Alamo Aircraft Supply, Inc. v. Weinberger, No. 85-1291, 1986 U.S. Dist. LEXIS 29010, at *5 (D.D.C. Feb. 21, 1986).

Confidentiality is the Key - The attorney-client privilege covers attorney-client communications when the specifics of the communication are confidential, even though the underlying subject matter is known to third parties. See Upjohn, 449 U.S. at 395-96. The Supreme Court in Upjohn concluded that the privilege encompasses confidential communications made to an agency attorney not only by decisionmaking "control group" personnel, but also by lower-echelon employees. Id. at 392-97.

4. Other Privileges

The FOIA neither expands nor contracts existing privileges, nor does it create any new privileges. See Ass'n for Women in Sci. v. Califano, 566 F.2d 339, 342 (D.C. Cir. 1977).

New Privileges? - Exemption 5 may incorporate virtually all civil discovery privileges; if a document is immune from civil discovery, it is similarly protected from mandatory disclosure under the FOIA. See Weber Aircraft, 465 U.S. at 799-800; Grolier, 462 U.S. at 26-27. Because Rule 501 of the Federal Rules of Evidence allows courts to create privileges as necessary, there exists the potential for "new privileges" to be applied under Exemption 5.

Personal Privacy - Exemptions 6 & 7C

Personal privacy interests are protected by two provisions of the FOIA, Exemptions 6 and 7(C). The two exemptions have slightly different language, but a similar analysis is used.

The analysis involves a 4 step process:

1. Is exemption's threshold met?
2. Is there a privacy interest?
3. Is there a qualifying public interest?
4. Balance the two interests.

General Issues Related to the Protection of Privacy

Practical Obscurity - The passage of time does not ordinarily diminish privacy protection. A fact that was previously public knowledge or disclosed may be so far from the public arena today that it is practically obscure and an exemption may apply. In fact, the privacy interest may increase with the passage of time. (Example: McCarthy era records)

"Piece Together" Argument - Privacy protection is not precluded by the fact that the requester could piece together the identity of a third party from other sources, or from improperly redacted documents.

Balancing the Public Interest - Interest is whether the records shed light on the agency's performance of its statutory duties. Congress did not intend this to be a personal standard. Courts have held that:

- (1) There is no public interest in assisting prisoners in challenging criminal convictions;
- (2) Parties alleging wrongdoing by government officials must substantiate the claim to demonstrate a public interest.

Minimal Privacy Interest? Even a minimal privacy interest is superior to no public interest.

Exemption 6 - Personal Privacy

Exemption 6 protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

Threshold Test - "Personnel and Medical and Similar Files" Courts have given this threshold a very broad reading to cover all information related to an individual.

When Does A Privacy Interest Exist?

1. **Intimate details:** marital status, legitimacy of children, medical condition, drug use, welfare status, and religious affiliation.
2. **Other personal details:** age, home address, information about unsuccessful job applicants; salary of non-federal employees; criminal convictions; performance appraisals, including "outstanding" evaluations; information that, although perhaps once public, has become "practically obscure."

When Is There NO Privacy Interest?

1. **Corporations**, in most cases (may be an exception with small companies, sole proprietorships).
2. **Deceased individuals**, except in extreme cases where relatives would be offended by details.
3. **Public records**, where not "practically obscure."
4. **Federal employees** - Note that OPM regulations mandate that there is no FOIA-recognized privacy for certain information concerning federal employees.
5. **Identities of FOIA requesters** - Agency should protect home address and telephone numbers. Do not disclose identities of first party requesters except when individual has made info public.

The passage of time does NOT diminish the privacy interest.

Exemption 7(C) - Personal Privacy in Law Enforcement Records

Exemption 7(C) protects information, when the disclosure of such information "could reasonably be expected to constitute an unwarranted invasion of personal privacy," 5 U.S.C. § 552(b)(7)(C).

Principle Issue - Could this release reasonably be expected to constitute an unwarranted invasion of privacy?

Mention of an Individual In Law Enforcement Records - Widely accepted that individuals have "a strong interest in not being associated in an unwarranted manner with alleged criminal activity." It will "engender comment and speculation."

Examples of Proper Agency 7(C) Withholdings -

- (1) Names of third parties mentioned in enforcement files.
- (2) Names of federal, state and local law enforcement investigative personnel, unless the requester can show significant misconduct.
- (3) Names of law enforcement clerical personnel.

Public Confirmation of an Investigation - Agency may not withhold the identity of the target of an investigation after publicly confirming that an investigation exists. (Example - U.S. Attorney on the steps of the court house).

Categorical Approach - U.S. Supreme Court has allowed agencies to create categories of information that will be considered exempt.

Glomar Response Example - In the situation where a request has been submitted for third party criminal records, and the agency has not acknowledged any investigation of the third party, then it is appropriate to withhold even the fact of an investigation to avoid unwarranted harm to the personal privacy of the third party.

Exemption 7 - Threshold Question

Exemption 7 protects "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information" could be expected to cause one of the harms outlined in one of the subparts. 5 U.S.C. § 552(b)(7)

Principle Issue - Are these law enforcement records?

Three Parts of the Exemption 7 Threshold Analysis -

1. "records or information"
2. "compiled" (rarely a difficult analysis)
3. "law enforcement purposes" (most difficult issue)

"Purpose" Test - Congress intended for Exemption 7 to protect regardless of the particular format or record in which [it] is maintained. *S. Rep. No. 98-221, at 23 (1983)*. Agencies should focus on the purpose for which information contained in a record has been generated.

1986 FOIA Amendments Broadened Scope

Protections of sub-parts were made available to all records or information compiled for law enforcement purposes. Even records generated pursuant to routine agency activities that previously could not be regarded as "investigatory" could now qualify for protection when those activities involve a law enforcement purpose. (Example: law enforcement manuals)

"Law Enforcement Purpose" Standard

- (1) May include civil, criminal, administrative and regulatory proceedings.
- (2) May apply to records compiled to enforce state law, unless the agency lacks the authority to pursue a particular law enforcement matter.
- (3) Most courts have held that background security investigations by government units which have authority to conduct such functions pass threshold.
- (4) Personnel investigations of government employees also are compiled for law enforcement purposes if they focus on specific and potentially unlawful activity by particular employees of a civil or criminal nature.
- (5) BUT general monitoring of employees to ensure compliance with the agency's statutory mandate and regulations does not satisfy threshold.

Agency Distinction

Mixed Function Agencies - Must show that the records at issue involved the enforcement of a statute or regulation within its authority.

Criminal Law Enforcement Agencies - Courts have accorded the government varying degrees of special deference.

A. Per Se Rule - 1st, 2nd, 6th, 8th Circuits - Qualifies all "investigative" records of criminal law enforcement agencies for protection under Exemption 7.

B. Nexus Rule - Other courts, while according significant deference to criminal law enforcement agencies, have held that an agency must demonstrate some specific nexus between the records and a proper law enforcement purpose.

C. District of Columbia *Pratt v. Webster* Rule - More stringent than per se rule.

Two-Part *Pratt v. Webster* Test

- (1) Are agency's investigatory activities that give rise to the documents related to the enforcement of federal laws or to the maintenance of national security?
- (2) Is the nexus between the investigation and one of the agency's law enforcement duties based on information sufficient to support at least a colorable claim of rationality?

Recompilations - Information not initially obtained or generated for law enforcement purposes may still qualify if it is subsequently compiled for a valid law enforcement purpose at any time prior to when the government invokes the exemption.

Note - Agency's May Not Apply Exemption 7 To Cover Improper Purpose (*Hoover era example*).

Exemption 7(A) - Protecting Investigation

Agencies may withhold information compiled for law enforcement purposes if disclosure "could reasonably be expected to interfere with enforcement proceedings."
5 U.S.C. §552(b)(7)(A).

Principle Issue - Could this release reasonably be expected to interfere with an enforcement proceeding?

Two-Step Analysis

- (1) Is the law enforcement proceeding pending/prospective?
- (2) Could the release reasonably be expected to cause some articulable harm?

Temporal Nature - Exemption 7A is not designed to endlessly protect law enforcement information. May only apply to enforcement proceedings that are:

- (1) Pending (*we are still investigating*).
- (2) Prospective (*we actually have a concrete plan to investigate in the future*), or
- (3) Preventative (*U.S. Secret Service example*).

Duration of Exemption 7A - May protect information for longer periods of time, in circumstances where a suspect is still at large, the crime remains unsolved, or there is a concrete chance for future proceedings. May apply to closed investigations, if records substantially relate to another proceeding (*Examples: prosecution of a co-defendant, or further investigation of the same subject*).

Law Enforcement "Proceedings" - May include civil actions, and regulatory or administrative proceedings. Agency must be able to point to a specific pending or contemplated enforcement proceeding, rather than just the possibility of future action.

Harm Standard - Categorical Approach - May withhold categories of records with a general, functional description of the harm. But, agencies are required to actually review the records to be certain they fit into the category. Examples of harm would be situations where:

- (1) Witnesses may be subject to reprisals and deterred from future cooperation.
- (2) The agency may lose the ability to control or shape the investigation.
- (3) Release would allow a target to evade detection, and
- (4) Release would prematurely reveal the government's strategy or evidence.

Information Provided by the Requester - Agency generally may not withhold this material, unless it can articulate how it would interfere with enforcement (*Examples: tax returns, INS applications*).

Changed Circumstances - When the enforcement proceeding has concluded, and there is no harm in disclosing the material, then the agency must process for release. Agency does not have a duty to monitor the applicability of 7A long term, but should do so during the administrative process or litigation. Agency may not ignore the changed circumstances.

Relation to (c)(1) Exclusion - If releasing the fact that an enforcement proceeding exists could reasonably be expected to interfere, and the requester is not yet aware of the proceeding, then (c)(1) allows the agency to treat the records as if they were outside the FOIA and claim "no records." Will apply only in rare cases. (Example: Large criminal organization disguised)

Exemption 7(B) - Protecting Subject

Agencies may withhold information compiled for law enforcement purposes if disclosure "would deprive a person of a right to a fair trial or an impartial adjudication" 5 U.S.C. §552(b)(7)(B).

Principle Issue - Would this release deprive a person of the right to a fair trial or impartial adjudication?

Wash. Post v. Dep't of Justice (D.C. Circuit) - Drug manufacturer had submitted a report to the Department of Justice in connection with a grand jury investigation. Media organization submitted a request for the report. Court held that the standard should be whether it was "more probable than not" that the disclosure "would seriously interfere" with the fairness of imminent enforcement proceedings.

Washington Post Two-Part Test

- (1) A trial or adjudication is pending or truly imminent; and
- (2) It is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings.

Exemption 7(D) - Confidential Informants

Agencies may withhold information compiled for law enforcement purposes if disclosure "could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source" 5 U.S.C. §552(b)(7)(D).

Principle Issues - Was this information obtained from a source and maintained confidentially? Was there an express or implied promise of confidentiality?

Agencies Must Look at the Facts of Each Case Individually

"Confidential" - Signifies that the agency received the information with the understanding that it would use it only for law enforcement purposes. Issue is often whether the source had this understanding

that the material would remain confidential, or whether the agency actually maintained the information as confidential.

"Source" - Broad term includes more than just informants. The 1986 FOIA Amendments added examples of Exemption 7(D) sources, but courts have found others.

Agency Must Protect Confidential Sources

- (1) Whenever law enforcement officials have given an express promise of confidentiality, or
- (2) Whenever it is reasonable to infer that such a promise was implied by the circumstances.

Express Promise of Confidentiality - The situation where a law enforcement agency makes an express promise to a source to only use the information for law enforcement purposes. The fact that a confidential source is paid for the information or provided knowingly false information to the agency is not significant for FOIA purposes.

Implied Promises of Confidentiality - Exemption 7D does not create a presumption of confidentiality or categories of confidential information. Must look at each case individually to determine the expectation of confidentiality.

Implied Promise Critical Factors

- (1) The nature of the crime being investigated that resulted in the interview of the source;
- (2) The source's relation to the crime; and
- (3) The potential for retaliation against the source.

Retaliation - The risk of retaliation does not have to include merely the risk physical harm. It could also be harassment, demotion, reassignment, or any injury that could be done to the source by the target of the investigation. (Example: Powerful company and suppliers)

Institutional Sources - May not categorically withhold material from institutional sources since these sources generally provide information that is not confidential. (Example: Local or foreign law enforcement)

Source Identifying Information - 1st Clause of 7(D) - May also withhold other information that tends to identify the source. Agency may even Glomar the request entirely, if any release would tend to identify the source.

National Security Intelligence Investigation - 2nd Clause of 7(D) - May protect the source, if the information is maintained as part of an investigation, and even when the source is anonymous to the agency.

Waiver of Confidentiality - Requester must show solid evidence that the source has manifested complete disregard for confidentiality. To prove waiver, by agency disclosure, requester will have to show that the information is exactly the same as that made public, and that the fact that the information was provided to law enforcement was also made public.

FOIA's (c)(2) Exclusion - If releasing the fact that a confidential source exists could reasonably be expected to lead to the identification of the source, then the agency may apply (c)(2) and treat the records as if they were outside the FOIA.

Exemption 7(E) - Techniques, Procedures, & Guidelines

Agencies may withhold information compiled for law enforcement purposes if disclosure "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. 552(b)(7)(E).

Principle Issues - What type of technique or procedure is this? What is the risk of circumvention?

First Clause - Techniques & Procedures

- (1) **No Harm Standard** - Does not require a determination that disclosure would risk circumvention of the law.
- (2) **Categorical Protection** - Covers techniques and procedures for investigations or prosecutions, but only if they are not well known to the public.
 - A. Courts have held that common law enforcement techniques, such as wiretapping or the placement of radio tracking devices on suspect vehicles, are well known to the public.
 - B. But, courts have generally allowed the withholding of information about techniques that are well known if it has other uses that may not be well known, or if it is used in conjunction with another technique in a unique fashion, or if the release would nullify its effectiveness.

Law Enforcement Manuals - Certain law enforcement manuals may be withheld.

Second Clause - Law Enforcement Guidelines

- (1) **Built-in Harm Standard** - Agency must make a determination whether the disclosure could reasonably be expected to risk circumvention of the law. Similar to Exemption 2 (High) and designed to protect only the material that would harm investigations or prosecutions.

Exemption 7(F) - Physical Safety

"(F) could reasonably be expected to endanger the life or physical safety of any individual."

Principle Issue - Is it reasonable to expect this release to endanger the life or safety of an individual?

Federal Law Enforcement Personnel - 7(F) may be used to protect federal law enforcement personnel who deal with serious categories of criminal offenders. Protection may remain in force even after the personnel have retired.

Third Parties & Informants - 7(F) may protect the identities of third parties, if the circumstances suggest that the third party could face danger as the result of disclosure.

Exemption 8 - Financial Institutions

Exemption 8 of the FOIA protects matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. §552(b)(8).

This exemption is very specific and rarely utilized. Courts have given the exemption a very broad scope.

Exemption 9 - Geological/Geophysical Data

Exemption 9 of the FOIA covers "geological and geophysical information and data, including maps, concerning wells." 5 U.S.C. § 552(b)(9).

This exemption is also very specific and rarely utilized. It has been applied to protect data related to various types of "wells."

Please do not hesitate to call OIP for help finding an answer to any FOIA question.

Department of Justice
Office of Information & Privacy
FOIA Hotline
202-514-FOIA (3642)

U.S. DEPARTMENT OF STATE

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Executive Order 13392

Review of Department FOIA Operations and Plan for Improvement**A. Nature of Department FOIA Operations**

Although it is among the smallest of the Cabinet-level agencies, the Department of State (the "Department") literally spans the globe in order to accomplish its foreign policy, security, consular, and related responsibilities. The Department's physical facilities consist of over 250 embassies, consulates, and diplomatic missions in virtually every country in the world, numerous offices in and around the Washington, D.C. area, and a number of field offices throughout the United States. These worldwide offices do not operate as semi-independent "sub-agencies" within the Department—they collaborate extensively with each other in order to fulfill the Department's mission. This is why FOIA requests (even if limited to a single topic) regularly necessitate searches in multiple locations within the Department's hundreds of domestic and overseas facilities.

The Department operates its FOIA program through the Office of Information Programs and Services ("IPS"), which is part of the Bureau of Administration. The Assistant Secretary for Administration serves as the Department's Chief FOIA Officer.

Maintaining a centralized FOIA program for an agency as large, complex and globally situated as the Department is an enormous challenge. However, the centralized nature of the Department's FOIA program provides for better service for requesters, affords consistency in review, and allows for better control over the Department's information access programs.

IPS administers virtually all significant records-access functions within the Department, including the FOIA and the Privacy Act. To carry out this broad responsibility, IPS establishes Departmental policies and procedures with regard to information access, and publishes regulations governing public access to Department records. IPS responds to, or coordinates the responses to, requests for information and records from a wide variety of customers, including the public (through FOIA and other information access provisions), the courts, the Congress, other federal agencies, private litigants, foreign governments and Department of State personnel. In addition to administering

the Department's FOIA program, IPS is also responsible for ensuring that the Department is in compliance with the Federal Records Act, the Privacy Act, and E.O. 12958, as amended (Classified National Security Information), including the declassification review of all Department records reaching 25 years of age. Although these activities interrelate with FOIA, they also compete with FOIA for resources.

The divisions and staffs of IPS are comprised of program analysts who are responsible for records management, case processing, research, and policy development and implementation; retired Foreign Service Officers who serve as expert consultants and reviewers; technical information specialists who retrieve, index, prepare and scan archival documents; computer specialists who design, develop, maintain and operate the corporate electronic archive, case tracking system and Intranet and Internet websites; and a variety of support staff.

The Department currently accepts FOIA requests by mail, facsimile, or via the Department's FOIA website. Incoming FOIA requests are reviewed to ensure that they are in compliance with Department FOIA regulations (22 CFR 171). When requests do not comply with Department FOIA regulations, IPS notifies requesters what is needed to "perfect" them.

Each perfected FOIA request is assigned to an IPS case analyst. The case analyst determines which offices within the Department may have responsive records and sends a copy of the FOIA request to those offices. Most offices are instructed to return potentially relevant documents to IPS for review.

The IPS case analyst also determines whether the FOIA request requires a search of any of the Department's "centralized" records (retired records and centralized electronic records). In response to FOIA and other types of requests, IPS conducts searches of the Department's vast numbers of inactive retired records. These records are stored in off-site facilities. In addition, IPS maintains and conducts searches of the Department's corporate electronic archive - the State Archiving System, which contains substantive documents that establish, discuss, or define foreign policy, set precedents, or require action or use by more than one office. It includes official record copies of incoming and outgoing Departmental communications, including telegrams between the Department and overseas posts; diplomatic notes; correspondence to and from the White House, members of Congress and other Federal agencies; position papers and reports; memoranda of conversation; and inter-office memoranda. It is a comprehensive source of information that documents and records the

conduct of U.S. foreign policy, and currently contains over 28 million records dating from 1973 to present.

A handful of offices within the Department conduct their own review of certain responsive documents and correspond directly with FOIA requesters. These offices deal with unique records (for example, personnel, security, medical and consular records) that require specialized expertise in order to conduct proper FOIA analysis. Although these so-called "decentralized" offices follow Department FOIA policies and regulations, they manage their own FOIA resources, structure and processing procedures.

With the exception of the decentralized records described above, IPS reviews all records for disclosure under the FOIA and the Privacy Act and corresponds with FOIA requesters. This review often involves consultation with interested bureaus and offices, overseas posts, other Federal agencies, and foreign governments.

IPS oversees the Department's FOIA administrative appeals process. An independent panel of three retired Foreign Service Officers (typically at the Ambassadorial level) is convened regularly to consider administrative appeals.

IPS maintains an automated case tracking system to track the handling of requests from beginning to end; to track the dispositions of all documents reviewed, and to compile statistics for the FOIA Annual Report. This database enables the Department to quickly determine if a document has been reviewed previously, which substantially reduces review time for any documents already released. Cases are assigned control numbers, which requesters can cite when inquiring about their requests. This database also provides IPS managers with weekly information to help them monitor the FOIA backlog, including the age of the requests.

IPS also maintains the Department's FOIA website and Electronic FOIA Reading Room where requesters can learn about Department records systems, find out how to make a FOIA request, including how to file a FOIA request online, find answers to frequently asked questions, and can search collections of records released under FOIA and as part of special document production efforts.

Currently, IPS is responsible for handling responses to status inquiries whether made telephonically, electronically (via email) or by mail. In 1997, IPS created

a staff to handle all status inquiries and requester complaints; the Advocacy and Oversight Branch is within the customer-focused Requester Liaison Division of IPS. This simplified the decisions to name the Requester Liaison Division as the Department's FOIA Requester Service Center and the Chief of that Division as the Department's FOIA Public Liaison whose functions and duties already matched those set out in the Order.

IPS has a long history of continuously looking for ways to improve upon its business processes and the technologies that support them in order to provide the highest level of service possible to its many customers around the world. Thus, IPS welcomes the opportunity afforded by E.O. 13392 to share its successes and experiences with interested readers.

B. Areas Selected for Review

The Department initiated reviews in all areas of its FOIA operations as outlined in the Order. Because the Department's FOIA administration is primarily centralized, the focus of this review was on the operations and practices of IPS. The decentralized bureaus, described above, were asked to conduct their own internal reviews of their FOIA operations. The final analyses of their reviews have been set as a milestone in the Department's improvement plan.

The reader is asked to keep in mind the magnitude, scope and complexity of the Department's FOIA administration. Its worldwide presence, its membership in the national security community; and diversity and range of its programs (from carrying out U.S. diplomacy abroad to issuing passports to U.S. citizens and visas to foreign visitors), have contributed to the evolution of the Department's FOIA program into a highly sophisticated operation.

In many of the areas identified in E.O. 13392 for review, the Department already had accomplished much, or had begun making improvements. For instance, the Department has used information technology to track requests for twenty-five years. Also, since 1997, the Department has maintained an Electronic Reading Room that contains a wealth of information about FOIA, Department organizations and records systems, and significant document collections released to the public. Also in 1997, IPS created the Requester Liaison Division, which is comprised of two branches: the Advocacy and Oversight Branch and the Requester Communications Branch. The division was designed to both respond to inquiries from the public and other IPS customers about our services and their requests, and to focus on customer

service and helping the public and other customers obtain what they need in a prompt, courteous manner. Thus, the functions of a FOIA Requester Service Center and FOIA Public Liaison were already being performed by this division.

IPS also performs outreach within the Department to provide FOIA guidance. In 2005, IPS hosted a three-day FOIA/PA training program for all interested Department personnel taught by the Department of Justice's Office of Information and Privacy (OIP). The program offered continuing legal education credits to Department attending legal staff and included a half-day devoted to the requester community that included representatives from the Hill, media, and public interest groups. The program was attended by nearly 250 Department employees. OIP reported it as one of the largest such training programs held to date and urged other agencies to hold similar training events.

The Advocacy and Oversight Branch, in coordination with the Department's Acquisitions Management Office, held a requester forum in December 2005 to provide information on procedural requirements and learn more about the specific issues in dealing with requests for contract information from requesters.

IPS also has taken advantage of other training offered by the Department of Justice and encouraged more than a dozen employees to participate in its three-day training at the National Advocacy Center in Columbia, South Carolina. In addition, IPS employees routinely participate in requester forums hosted by the American Society of Access Professionals, the Office of Management and Budget, and other entities, to keep abreast of requesters concerns and best practices in other agencies.

In establishing the FOIA Requester Service Center, all employees who interact with the public are scheduled to receive Customer Service training at the Department's Foreign Service Institute to further enhance interpersonal skills.

IPS has also launched an initiative to achieve certification under the ISO 9000 quality management standard. This internationally recognized standard requires an organization to:

- 1) Define its objectives;
- 2) Define performance standards to meet those objectives;
- 3) Write procedures to meet the standards and detect deviations;
- 4) Change processes to correct systemic deviation;
- 5) Solicit customer feedback; and

- 6) Change processes to improve performance based on customer feedback.

The Requester Communications Branch, which is the initial point of receipt for incoming FOIA and Privacy Act requests, is the first IPS component to participate in this initiative. Accordingly, procedures surrounding the initial processing of FOIA and Privacy Act requests have been reviewed and documented to ensure that such determinations are made in a consistent manner and in conformance with the Department's regulations. Participation in the ISO 9000 initiative has already improved the Department's communications at the initial processing stage in FOIA and Privacy Act cases. IPS is planning to fold other IPS components into the ISO 9000 initiative.

The Department undertook a successful, major FOIA/PA backlog reduction effort in 2002-2004. However, significant increases in the number of new requests, increased mandated demands, and other factors have caused the FOIA/PA request backlog to rise again. For this reason, backlog reduction is one of the areas targeted for improvement in the Department's plan.

Specific areas reviewed in IPS:

- ▶ Current methods for receiving and providing prompt and appropriate responses to inquiries from FOIA requesters about the status of their requests. (Section 2(c)(vi))
- ▶ Overall FOIA administration, including expenditure of resources on FOIA compliance and the extent to which requests for records have not been responded to within the statutory time limit (backlog) (Section 3(a)(i))
- ▶ Processes and practices by which the Department assists and informs the public regarding the FOIA process (Section 3(a)(ii))
- ▶ Use of information technology in responding to FOIA requests (Section 3(a)(iii)(A))
- ▶ Practices with respect to requests for expedited processing (Section 3(a)(iii)(B))

- ▶ Department implementation of multi-track processing (Section 3(a)(iii)(C))
- ▶ Department policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in FOIA subsection (a)(2) (Section 3(a)(iv))
- ▶ Identification of ways to eliminate or reduce its FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the Department (Section 3(a)(v))
- ▶ Trouble-shooting existing problems – database integrity and FOIA/PA business processes

C. Results of Review

Methods for Prompt, Appropriate Responses to Requests and Status Inquiries

Prior to the preparation of the FY2005 FOIA Annual Report, IPS had launched an initiative to achieve certification under the ISO 9000 quality management standard. The branch within IPS that serves as the initial point of receipt for incoming FOIA requests was the first IPS component to participate in this initiative. Procedures surrounding the validity of a FOIA request, expedited processing determinations, and the granting or denial of fee waivers were reviewed and documented to ensure that these determinations were being made in a consistent manner and in full conformance with the Department's published regulations. This initiative already has produced documented results in producing more comprehensive communications at the initial processing stage in FOIA and Privacy cases. Certification for these activities is expected to occur in October 2006.

Further review results showed that a recent realignment of staff and cutbacks in WAE ("When Actually Employed") staff had resulted in significant delays in initial responses to requests. In addition, the review under E.O. 13392 led the Department to the conclusion that a better system to track responses to status inquiries was needed to allow supervisors to pinpoint bottlenecks in the process and deal with them quickly.

Resources Expended on FOIA Compliance and Backlog

The Department has struggled with FOIA backlogs off and on over the years. In 2001, the Government Accountability Office gave the Department extremely low marks in this area. The Department's response was a major, two-year backlog reduction effort known as "Operation Due Diligence" ("ODD Project"). IPS was granted twenty-three new full-time positions and a total of \$12 million (\$8 million to sustain the two-year taskforce and \$4 million the following year to continue FOIA backlog and records declassification). The taskforce consisted of full-time employees diverted from our permanent infrastructure to provide leadership, training, and supervision, and reviewers and contractors (analyst, technical and support personnel) from a company that specializes in FOIA backlog reduction, bringing with it experienced information access professionals to aid in the backlog reduction efforts. The ODD Project ultimately surpassed its original goal of completing 80% of all pending cases by the end of fiscal year 2004 (September 30, 2004). Over the two-year project cycle, more than 11,500 requests were completed. By the end of fiscal year 2004, IPS had reduced the Department's overall FOIA backlog from 6,214 to fewer than 2,000 cases.

The Department also initiated actions to increase the resources allocated to the FOIA program, including additional workforce recruitment efforts to supplement existing staffing resources. First, IPS recruited nearly seventy additional retired Senior Foreign Service Officers to add to its document reviewer corps. Such recruiting is an ongoing effort and all are employed on a temporary, part-time basis.

Beginning in 2002, IPS staffed some of the more time-consuming and labor-intensive support activities inherent in responding to FOIA requests and other document production demands with students recruited from universities in the metropolitan area under the "STARS" (Success-Today and Tomorrow-Through Training and Recruiting Students) program. Twenty-three students are currently working in FOIA or FOIA support activities. In addition, IPS has two Presidential Management Fellows. This, too, is an ongoing effort that will continue to make a major contribution to the FOIA program.

IPS is implementing a "Performance, Efficiency, and Quality (PEaQ) Reporting System." The objectives are to enable IPS managers to: (1) measure individual and organizational productivity, (2) determine where resource shortfalls exist, (3) determine where weakness remains in the business process, (4) forecast

branch/division productivity, (5) monitor and justify program expenditures, and (6) forecast resource requirements.

Processes/Practices for Assisting and Informing the Public on FOIA Process

IPS maintains the Department's FOIA Electronic Reading Room, which is the primary method for informing the public about the FOIA process within the Department. In 2001, the Government Accountability Office gave the Department exceptionally high marks for using electronic media and the Internet to make FOIA guidance, released documents, and reference material available to the public. However, the review currently undertaken revealed some areas that needed updating, both in terms of technology and information provided. The Department also found that although an internal review of a public website was fruitful, a more meaningful measure of website user-friendliness would require obtaining direct input from the user community.

Use of Information Technology in Responding to FOIA Requests

In 2004, IPS added a new functionality to the Department's FOIA website to allow individuals to file on-line FOIA requests. Although the Department's customers have benefited from this improvement, the impact on the program has been significant increases in the number of FOIA requests the Department receives each year. These increases were not foreseen, and have been a contributing factor in the steady upward climb of the FOIA backlog.

IPS already uses information technology to track all phases of request processing. Its current system operates in a national security environment to afford adequate protection of classified information. Due to the inherent constraints of operating within a classified environment, there are internal technical barriers that prevent the smooth transfer of properly declassified data to the Department's website and meeting requester electronic format preferences. Preliminary inquiries into current technological solutions have not been fruitful.

Practices with Respect to Requests for Expedited Processing

IPS determines whether a request meets established criteria for expeditious processing. IPS already employs a checklist, which the case analysts on the Requester Communications Branch use to make initial expedite determinations. In addition, any decision to grant expeditious processing must be approved by

the Chief of the Requester Liaison Division in coordination with the Office of the Legal Adviser. The latter provides for consistency in decisions to put certain requests ahead of all others. Some improvements could be made to this function in terms of more detailed written guidelines, training for affected staff, and performance oversight.

Implementation of Multi-track Processing

The Department has implemented multi-track processing. However, IPS has discovered that improvements can be made in the Department's identification, tracking and handling of requests within multiple processing tracks.

Policies/Practices on Availability of Public Information and (a)(2) Records

The Department determined that there may be room for improvement in meeting full compliance with the requirements of FOIA's subsection (a)(2), including both material that must be automatically disclosed, such as final opinions and orders made in adjudicating cases and statements of policy and interpretations adopted by the Department and not published in the *Federal Register*, and the posting of frequently requested documents. Although the Department received high marks from GAO in 2001 on its compliance with these requirements, there is a need for updating some of the information already disclosed on the website, and a need for establishing procedures and methods for posting frequently requested FOIA records.

Ways to Eliminate or Reduce Backlog

As mentioned earlier, the Department's FOIA backlog was significantly reduced with a major infusion of resources. The two-year backlog reduction project resulted in a reduced backlog ahead of the project's schedule and surpassing its targeted number of completed cases. The IPS team achieved this success with an investment in people, process, infrastructure and technology.

In more recent years, unforeseen increases in the number of new FOIA requests made directly to the Department, and increases in other records-related mandates, indicate that additions to baseline resources may be needed to maintain the level of pending requests at a reasonable level. However, more detailed metrics and evaluation of current resources and processes are required to establish the amount of increase to baseline resources necessary to minimize and stabilize the FOIA/PA request backlog.

Troubleshooting Existing Problems – Data Integrity and Business Process

During the preparation of the FY2005 FOIA Annual Report, IPS already had identified some important areas for improvement. IPS found that certain data in its automated case tracking system has been entered either inconsistently or improperly. Therefore, data integrity and the associated business processes that feed into them were identified as other areas needing improvement.

A common thread throughout the review of IPS FOIA operations was the need to establish baseline data for business processes, and better methods for monitoring those processes. The scope of some of the problems discovered, together with the desire to set realistic, meaningful goals for improvement, led IPS to determine that in-depth evaluation of each improvement area was critical to sustained improvement. Without concrete, reliable data, IPS can neither accurately pinpoint bottlenecks, nor substantiate requests for the resources needed to ensure the outcomes desired.

IPS also has put into place a Process Improvement Team comprised of program analysts from the Statutory Compliance and Research Division that is responsible for completing the processing of FOIA/PA requests made to the Department. The Team was created to address challenges within the present work environment – an increasing workload coupled with scarce resources – and the need to develop solutions at all levels. The Team strives to reduce or eliminate inconsistencies, discrepancies and disparities in processing.

A separate, and complimentary, effort within IPS is the establishment of a Business Process Committee that seeks to address issues raised in a survey of all IPS employees about the work environment and program needs. The focus of the committee is to create a plan of action for promoting efficiency and standardization in all IPS work processes. Among the issues under discussion are the need for standardization, the role of managers, and the need for broader understanding of request processing and skills development.

In Conclusion

The review of IPS FOIA operations (with reviews of the FOIA operations within decentralized offices to follow later this year), identified many areas where improvements have been made, and others where improvements could be made in order to build on past successes. The magnitude and complexity of the Department's worldwide FOIA program and global customer base calls for

more in-depth evaluation of key policies and processes in order to formulate more meaningful and concrete targets for improvement. In keeping with its customer-centric approach to doing business, IPS intends to expand its outreach efforts to its FOIA clientele. Thus, the targeted improvements will be aimed at on satisfying customer needs. The ISO 9000 quality management standard and other management methodologies will help IPS managers drive needed improvements throughout the FOIA process.

D. Areas Chosen to Include in Improvement Plan

- (1) Customer Service
- (2) Informing the Public on FOIA Process
- (3) Use of Information Technology
- (4) Expedited Processing
- (5) Multi-Track Processing
- (6) Affirmative Disclosure under FOIA Subsection (a)(2)
- (7) Backlog Reduction
- (8) Troubleshooting Existing Problems – Data Integrity and Business Processes

E. Goals and steps/milestones for each area

NAME: CUSTOMER SERVICE

GOAL/OBJECTIVE 1: *Develop customer service standards*

PLANNED STEPS:

- Develop customer service plan based on *ad hoc* input from customers
- Pilot a new Requester Service Center telephone system (to include hardware and software) to permit managerial intervention, monitoring and control, and institute solutions, as appropriate
- Establish requirement for mandatory customer service training for all staff and supervisors in FOIA Requester Service Center
- Post customer service standards on website

TIME MILESTONES:**By February 2007:**

- Develop and post on website customer service plan
- Complete pilot of telephone system

By March 2007:

- Based on results of pilot, institute new telephone system, as appropriate
- Post qualitative and quantitative customer service standards on website
- Complete mandatory customer service training

MEANS OF MEASUREMENT:

- Branch chiefs to quarterly review productivity reports against established customer service standards, i.e., response times for status inquiries, acknowledging requests, etc.
- FOIA Public Liaison to review customer feedback received by Requester Service Center about acknowledgement process and responses to status inquiries

GOAL/OBJECTIVE 2: Improve content of and response times for acknowledging requests and answering status inquiries

PLANNED STEPS:

- Conduct in-depth senior-level review of current acknowledgement process
- Conduct in-depth review of current process for responding to status inquiries
- Establish standards for acknowledgement process and formalize them in Standard Operating Procedures (SOPs)
- Train staff on SOPs
- Monitor progress and implement necessary process improvements
- Continue to improve quality and timeliness of responses through performance management and statistical analysis

TIME MILESTONES:**By December 2006:**

- Complete in-depth senior-level review of current acknowledgement process

By April 2007:

- Complete in-depth review of process for responding to status inquiries
- Revise letter templates, as indicated by review

By June 2007:

- Train staff on SOPs, including proper identification of validity requirements
- Create standards for acknowledgement process
- Complete formalization of Standard Operating Procedures for acknowledgment process.

Beginning July 2007:

- Branch chiefs quarterly monitor progress

MEANS OF MEASUREMENT:

- Branch chiefs to biannually audit random sampling of case files and conduct statistical analysis for adherence to SOPs and standards

NAME: INFORMING PUBLIC ABOUT FOIA PROCESS

GOAL/OBJECTIVE: *Find ways to improve website based on customer preferences*

PLANNED STEPS:

- Conduct in-depth evaluation of website and explore methods for measuring customer satisfaction with website
- Establish focus group to better discern requester preferences, including website user-friendliness, ease of navigation, as well as need to improve communication with requester community, and public awareness of website
- Evaluate feedback from focus group and benchmark with industry to establish standards for website
- Establish system to monitor progress toward meeting standards
- Initiate viable solutions and post changes/solutions to website
- Consolidate FOIA Guide information into single document

TIME MILESTONES:**By December 2006:**

- Identify and host focus group aimed at improving website based on customer preferences

By April 2007:

- Evaluate focus group feedback/findings

By June 2007:

- Complete in-depth evaluation of website and establishment of standards and benchmarking with industry
- Complete consolidation of FOIA guide information on website
- Complete posting of changes/solutions to website

MEANS OF MEASUREMENT:

- Follow-up feedback from focus group members
- Feedback provided by requesters who contact FOIA Requester Service Center
- Quarterly reviews of website contents for accuracy and timeliness conducted by FOIA Requester Service Center

NAME: USE OF INFORMATION TECHNOLOGY (IT)

GOAL/OBJECTIVE: *Examine methods for disclosing information in electronic format according to customer request*

PLANNED STEPS:

- Examine available COTS solutions that will permit and facilitate the posting of declassified documents and "burning" documents to CDs
- Conduct Proof of Concept of an available COTS solution
- If feasible, initiate pilot project of COTS solution
- Work with OMB, DOJ and intelligence community on the use of IT in providing public access to information, and to resolve public access issues, like the ability to provide released records in specific electronic formats

TIME MILESTONES:**By January 2007:**

- Complete Proof of Concept of COTS solution

By April 2007:

- Based on results of Proof of Concept for COTS solution, initiate pilot phase

MEANS OF MEASUREMENT:

- COTS solution must be found to provide requested records as specified by requester at highest possible standard within national security/intelligence community

NAME: EXPEDITED PROCESSINGGOALS/OBJECTIVES: *Ensure:*

- *consistency in applying expeditious processing criteria;*
- *that requests are granted expedition in accordance with statutory requirement and published regulations (22 C.F.R. §171.12);*
- *that requests determined to warrant expedition are processed ahead of all others, except for requests already determined to warrant expedition*
- *that case tracking database accurately reflects expeditious processing determinations*

PLANNED STEPS:

- Conduct in-depth evaluation of current expedited processing procedures
- Clarify and/or update expedite criteria definitions and procedures in Standard Operating Procedures (SOPs)
- Train all staff on procedures
- Supervisors to weekly monitor expedited cases

TIME MILESTONES:**By March 2007:**

- Complete in-depth evaluation of expedited processing procedures
- Complete update of SOPs
- Complete training of staff and institute improved supervisory oversight

By June 2007:

- Ensure database accurately reflects expeditious processing determinations.

MEANS OF MEASUREMENT:

- Quarterly audit all case in which expeditious processing was requested for adherence to SOPs and standards and take any corrective action necessary to enhance compliance
- Branch chiefs to weekly monitor the status of request granted expedition

NAME: MULTI-TRACK PROCESSING**GOALS AND OBJECTIVES: Ensure:**

- *consistency in applying multi-track processing criteria*
- *multi-track system remains effective*
- *that requests are processed first-in, first-out within each track*
- *that case tracking database accurately reflects expeditious processing determinations*

PLANNED STEPS:

- Conduct in-depth evaluation of current multi-track processing procedures
- Clarify and/or update multi-track definitions and procedures in Standard Operating Procedures (SOPs)
- Train all staff on procedures
- Branch chiefs to quarterly monitor appropriate implementation of multi-track system

TIME MILESTONES:**By April 2007:**

- Complete in-depth evaluation of multi-track process
- Complete update of SOPs
- Complete training of staff and institute improved supervisory oversight

By October 2007:

- Ensure database accurately reflects multi-track processing determinations

MEANS OF MEASUREMENT:

- Branch chiefs to perform quarterly audits of random sampling of case files for adherence to SOPs and standards and to identify any trends that may affect the entire population

NAME: AFFIRMATIVE DISCLOSURE UNDER SUBSECTION (a)(2)GOAL/OBJECTIVE 1: *Improve overall compliance with FOIA (a)(2) requirements*PLANNED STEPS:

- Perform initial query of all bureaus about any additional (a)(2) material that is not already posted on website or other public venue
- Evaluate any additional (a)(2) material returned by bureaus
- Post appropriate materials to FOIA website and schedule updates according to bureau schedules
- Annually query the Department for any new sources of (a)(2) material

TIME MILESTONES:**By March 2007:**

- Complete evaluation of additional (a)(2) materials sent back by bureaus and post material that is appropriate on the website

By March of 2008 and annually thereafter:

- Complete query of Department for any new sources of (a)(2) material

MEANS OF MEASUREMENT:

- Complete evaluation of responses from all bureaus received in IPS
- Post appropriate materials in Electronic Reading Room

GOAL/OBJECTIVE 2: *Post frequently requested documents on website*PLANNED STEPS:

- Conduct in-depth evaluation of process for posting frequently requested documents on website
- Establish written procedures for identifying frequently requested documents

- Train staff on procedures
- Implement procedures

TIME MILESTONES:

By May 2007:

- Complete in-depth evaluation of process of posting frequently requested documents on website

By October 2007:

- Complete update of SOPs for staff on identifying frequently requested documents

By January 2008:

- Complete training of staff and fully implement procedures
- Complete update of SOPs for staff on identifying frequently requested documents

MEANS OF MEASUREMENT:

- Frequently requested documents on website will be updated quarterly
- Quarterly monitor progress of web postings and compliance with procedures

NAME: BACKLOG REDUCTION

GOAL/OBJECTIVE 1: *Short-term project to achieve 35 percent reduction in projected end-of-FY '06 backlog of FOIA/PA requests made directly to Department (not including referrals from other agencies)*

PLANNED STEPS:

- Realign resources from other IPS program areas temporarily and restore WAE reviewer hours to assist with FOIA backlog reduction
- Assign summer hires to work on backlog reduction
- Closely monitor project status to ensure steady progress

TIME MILESTONES:**By October 2006:**

- Reduce projected backlog by 35 percent

MEANS OF MEASUREMENT:

- Amount projected end-of-FY2006 backlog of requests made directly to the Department (projected at about 3,700 direct requests) is actually reduced

GOAL/OBJECTIVE 2: Evaluate production rates in order to identify what a reasonable backlog of requests is, and then determine the specific resources needed to reduce and maintain the backlog at that level

PLANNED STEPS:

- Undertake study to determine what a reasonable backlog level would be given requests received and resources required
- Identify, develop, validate and utilize a variety of management tools to evaluate performance and productivity
- Evaluate results of operational review performed by decentralized bureaus
- Build awareness in the Department of the requirements of E.O. 13392
- Assess data to identify resources needs (i.e., human resources, including FTE and contractor, equipment, software and infrastructure) to maintain reasonable backlog level over the long-term
- Use data to justify necessary resources to Department resource managers
- Implement solutions identified
- Monitor/report on progress to Department senior officials

TIME MILESTONES:**By September 2006:**

- Build awareness within the Department of the requirements of E.O. 13392

By December 2006:

- Complete evaluation of decentralized bureaus operational reviews

By March 2007:

- Determine reasonable backlog level
- Determine necessary FTE and contractor resources
- Determine necessary equipment and software

- Determine necessary space

MEANS OF MEASUREMENT:

- Achieving and maintaining reasonable backlog level
- Weekly management reports on pending workload and requests completed

NAME: **TROUBLESHOOTING OTHER PROBLEMS – IMPROVING DATA INTEGRITY AND BUSINESS PROCESSES**

GOAL/OBJECTIVE 1: *Establish standards for data integrity for the automated case tracking system and ensure that all employees and supervisors understand and maintain those standards*

PLANNED STEPS:

- Assess data integrity in case tracking system and conduct gap analysis
- Establish and implement standards, responsibilities and procedures for entering data
- Train and regularly update training of all staff on proper data entry procedures
- Establish mechanism to monitor data integrity and hold employees and supervisors accountable
- Integrate accountability for data integrity and adherence to SOPs in work requirements

TIME MILESTONES:

By December 2006:

- Complete in-depth evaluation of data integrity
- Establish and implement standards, responsibilities and procedures for entering data
- Complete initial training of all staff

By January 2007:

- Establish work requirements and system for monitoring compliance with data integrity standards

MEANS OF MEASUREMENT:

- Periodic audits of random sampling of case files to determine accuracy
- Ongoing review by supervisors and team leaders to conduct error-rate analysis

GOAL/OBJECTIVE 2: Streamline and standardize FOIA business processes, and ensure that all employees and supervisors are trained on processes and their proper implementation

PLANNED STEPS:

- Assess all FOIA business processes
- Seek ISO 9000 certification for all IPS branches
- Identify streamlined processes and establish them as standards
- Incorporate procedures for standardized business processes into SOPs
- Train all employees and supervisors on standardized business processes
- Integrate accountability for adherence to SOPs into work requirements

TIME MILESTONES:**By December 2007:**

- Complete in-depth evaluation of FOIA business processes
- Identify streamlined processes that will become standards
- Establish and implement procedures for standardized business processes

By January 2008:

- Complete training of all staff on streamlined, standardized business processes, and establish system for monitoring compliance

Beginning March 2008:

- Branch chiefs to quarterly monitor implementation of streamlined, standardized business processes

After 2008:

- Complete ISO 9000 certification of all branches

MEANS OF MEASUREMENT:

- Biannual audits of a random sampling of case files to determine compliance

F. (1) Areas Anticipated to Be Completed by December 31, 2006**CUSTOMER SERVICE**

- Complete in in-depth senior-level review of current acknowledgement process

INFORMING PUBLIC ABOUT FOIA PROCESS

- Identify and host focus group aimed at improving website based on customer preferences

BACKLOG REDUCTION

- Reduce projected end-of-FY2006 backlog by 35 percent
- Build awareness within the Department of the requirements of E.O. 13392
- Complete evaluation of decentralized bureaus operational reviews

TROUBLESHOOTING OTHER PROBLEMS – IMPROVING DATA INTEGRITY AND BUSINESS PROCESSES

- Complete in-depth evaluation of data integrity
- Establish and implement standards, responsibilities and procedures for entering data
- Complete initial training of all staff on standards, responsibilities and procedures for entering data

(2) Areas Anticipated to Be Completed by December 31, 2007**CUSTOMER SERVICE**

- Develop customer service plan based on *ad hoc* input from customers
- Complete pilot of telephone system
- Based on the results of pilot, institute new telephone system, as appropriate (includes hardware and software)
- Post qualitative and quantitative customer service standards on website
- Complete mandatory customer service training
- Complete in-depth review of process for responding to status inquiries
- Revise letter-templates, as indicated by review
- Train staff on SOPs, including proper identification of validity requirements
- Create standards for acknowledgement process

- Complete formalization of Standard Operating Procedures for acknowledgment process
- Branch chiefs quarterly monitor progress

INFORMING PUBLIC ABOUT FOIA PROCESS

- Evaluate focus group findings/feedback for improving website
- Complete in-depth evaluation of website and establishment of standards
- Complete consolidation of FOIA guide information on website
- Complete posting of changes/solutions to website

USE OF INFORMATION TECHNOLOGY (IT)

- Complete Proof of Concept of COTS solution
- Based on results of Proof of Concept for COTS solution, initiate pilot phase

EXPEDITED PROCESSING

- Complete in-depth evaluation of expedited processing procedures
- Complete update of SOPs
- Complete training of staff and institute improved supervisory oversight
- Ensure database accurately reflects expeditious processing determinations

MULTI-TRACK PROCESSING

- Complete in-depth evaluation of multi-track processing procedures
- Complete update of SOPs
- Complete training of staff and institute improved supervisory oversight
- Ensure database accurately reflects multi-track processing determinations

AFFIRMATIVE DISCLOSURE UNDER SUBSECTION (a)(2)

- Complete evaluation of additional (a)(2) materials sent back by bureaus and post material that is appropriate on the website
- Complete in-depth evaluation of process of posting frequently requested documents on website
- Complete update of SOPs for staff on identifying frequently requested documents

BACKLOG REDUCTION

- Determine reasonable backlog level
- Determine necessary FTE and contractor resources
- Determine necessary equipment and software

- Determine necessary space

TROUBLESHOOTING OTHER PROBLEMS – IMPROVING DATA INTEGRITY AND BUSINESS PROCESSES

- Establish work requirements and system for monitoring compliance with data integrity standards
- Complete in-depth evaluation of FOIA business processes
- Identify streamlined processes that will become standards
- Establish and implement written procedures for standardized business processes

(3) Areas Anticipated to Be Completed After December 31, 2007

AFFIRMATIVE DISCLOSURE UNDER SUBSECTION (a)(2)

- Complete training of staff and fully implement procedures
- Complete update of SOPs for staff on identifying frequently requested documents for committee review
- Query all bureaus for any updates of (a)(2) materials

TROUBLESHOOTING OTHER PROBLEMS – IMPROVING DATA INTEGRITY AND BUSINESS PROCESSES

- Complete training of all staff on streamlined, standardized business processes, and establish system for monitoring compliance
- Branch chiefs to quarterly monitor implementation of streamlined, standardized business processes
- Complete ISO 9000 certification for all IPS branches



Department of State
Freedom of Information Act Seminar
September 11, 2007
Washington, DC

IS

Tuesday, September 11, 2007

9:00 – 9:15 a.m.

Introduction

Llewellyn Hedgbeth
Deputy Assistant Secretary
for Information Sharing Services

Welcome

Raj Chellaraj
Assistant Secretary and Chief FOIA Officer

9:15 – 9:45 a.m.

Executive Order 13,392
“Improving Agency Disclosure of Information”

Kenneth A. Hendricks
Attorney-Advisor
Office of Information and Privacy
Department of Justice
Washington, DC

Thomas E. Hitter
Attorney-Advisor
Office of Information and Privacy
Department of State
Washington, DC

9:45 – 10:00 a.m.

Break

10:00 – 11:30 a.m.

The Freedom of Information Act: An Overview

Janice G. McLeod
Associate Director
Office of Information and Privacy
Department of Justice
Washington, D.C.

11:30 – 11:45 a.m.

Break

Tuesday, September 11, 2007 (continued)

11:45 – 1:00 a.m.

Fees and Fee Waivers

Janice G. McLeod
Associate Director
Office of Information and Privacy
Department of Justice
Washington, DC

1:00 – 2:15 p.m.

Lunch

2:15 – 3:15 p.m.

**The Freedom of Information Act:
Exemptions/Litigation**

Michael J. Sherman
Attorney-Advisor
Office of Information and Privacy
Department of Justice
Washington, DC

Allan L. Blutstein
Attorney-Advisor
Office of Information and Privacy
Department of Justice
Washington, DC

3:15 – 3:30 p.m.

Break

3:30 – 4:30 p.m.

**The Freedom of Information Act:
Exemptions/Litigation**

Michael J. Sherman
Attorney-Advisor
Office of Information and Privacy
Department of Justice
Washington, DC

Allan L. Blutstein
Attorney-Advisor
Office of Information and Privacy
Department of Justice
Washington, DC

4:30 – 4:45 p.m.

Wrap up/Complete Registration